



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 080054

Petitioners, Albert and Parvaneh Shamsi, applied to the Building Commissioner for permission to construct a garage addition to their existing residence at 64 Dudley Street. The application was denied and an appeal was taken to this Board.

On 4 December 2008, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed 5 February 2009, at 7:15 p.m. in the Selectmen's Hearing Room as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to his attorney (if any) of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on 15 and 22 January 2009 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioners: **ALBERT and PARVANEH SHAMSI**
Location of Premises: **64 DUDLEY ST BRKL**
Date of Hearing: **02/05/2009**

Time of Hearing: 7:15 p.m.

Place of Hearing: Selectmen's Hearing Room, 6th. floor

A public hearing will be held for a variance and/or special permit from:

- 1) 4.07; Table of Use Regulations;
Use #54, Variance Required.
- 2) 4.07; Table of Use Regulations;
Use #55, Special Permit Required.
- 3) 5.43: Exceptions to Yard and Setback Regulations, Special Permit
Required.
- 4) 5.60, Side Yard Requirements, Variance Required.
- 5) 8.02.2, Alteration or Extension; Special Permit Required of the Zoning By-Law to
construct a garage addition to the existing residence per plans at 64 DUDLEY STREET BRKL.

Said Premise located in a S-15 (Single Family) district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Jonathan Book, Mark Allen and Kathryn Ham. Attorney Youman of 275 Waverly Avenue, Newton, MA, daughter of the petitioners, presented the case before the Board.

Attorney Youman said she had grown-up in the single-family home located at 64 Dudley Street and that it is located immediately adjacent to the Brookline Reservoir. Also on the lot is an attached pool house and a tennis court. A common driveway exists to the right of the dwelling and is used by both the residents of 64 Dudley Street and those of 68 Dudley Street, behind the subject property. A carriage

house in the far rear corner of the lot is used as a garage. She said that the site plan indicates the carriage house is a four-car garage, but there are actually only two vehicle bays and the rest of the structure is used for storage. The property is nicely landscaped and well maintained.

Attorney Youman said her parents, Albert and Parvaneh Shamsi, propose to construct a side addition to the dwelling to serve as an attached two-car garage. The garage would be a single-story addition, 20.5 feet by 19.8 feet, with a shed roof. A new set of interior stairs would lead directly from the new garage to the existing pool house. The garage would be partly underground because of the existing grade. A new retaining wall would allow vehicular access from the existing drive. Two small windows would be visible on the front elevation. The exterior of the garage will be finished and painted to match the existing building.

Attorney Youman said it has become increasingly more difficult for her parents to negotiate their way back to the house after parking their car in the carriage house. She said that they were concerned about security as well. She said that her parents needed zoning relief from the side yard requirements as well as relief because the structure is pre-existing, non-conforming.

The Chairman asked whether anyone in attendance wish to speak in favor or opposed to the proposal. No one rose to speak. Ms. Youman stated that letters of support had been submitted to the Board from the neighbors located at 54, 68 and 80 Dudley Street; Chairman Book acknowledged that that the file contained copies of such letters..

The Chairman asked whether any members of the Board had questions at this point. Board Member Kathryn Ham asked about the parking in the existing carriage house. Attorney Youman said that the portion not devoted to the parking of two cars was on a lower level not accessible for parking. She said that it had been a stable and was now only used for storage.

Lara Curtis, Senior Planner, delivered the findings of the Planning Department:

Section 4.07 – Table of Use Regulations, Use #54: Allows up to four spaces by right for a single-family dwelling on a lot with at least 10,000 s.f.

Section 4.07– Table of Use Regulations, Use #55: Allows by special permit more parking spaces than allowed under Use #54. *The existing carriage house/garage is only used for two vehicles, so the total number of parking spaces on site would be four with this proposed addition, thereby complying with Use #54 and not requiring a special permit under Use #55.*

Section 5.60 – Side Yard Requirements

Section 8.02.2 – Alteration or Extension: A special permit is required to alter or extend this nonconforming structure.

Setback	Required	Proposed	Finding
Side Yard	15 feet	8 feet	Special Permit / Variance*

*Under **Section 5.43**, the Board of Appeals may by special permit allow the substitution of other dimensional requirements for yards and setbacks subject to the provision of counterbalancing amenities. The applicants have indicated landscaping around the new garage addition would likely be provided as a counterbalancing amenity.

Ms. Curtis reported that the Planning Board was not opposed to this application for a new garage addition, and does not expect it to adversely affect the neighborhood. It has been designed to be minimally visible from the street while still meeting the needs of the homeowners. The new garage is not expected to interfere with the driveway, and although tight, vehicles should be able to maneuver in and out of the proposed garage with little difficulty. Landscaping should be installed along the new retaining walls to improve their overall appearance. Therefore, she said, the Planning Board recommended approval of the proposal and submitted plans, including the site plan prepared by J.F. Hennessy and last dated 9/19/08, and the submitted plans and elevations prepared by Anderson Associates Architects and dated 9/1/08, subject to the following conditions:

1. **Prior to issuance of a building permit, a landscaping plan, indicating wall details and all counterbalancing amenities, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
2. **Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final elevations, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

Michael Shepard, Building Commissioner, delivered the comments from the Building Department. He said that the existing dwelling and grounds were very well kept. He said that set-back relief was minimal considering that the property line effectively split the passageway which is shared with the neighbor to the rear. Mr. Shepard said that the Building Department was supportive of the project as well as the recommended conditions of the Planning Board.

Chairman Book inquired whether it was possible to park four vehicles in the carriage house. Attorney Youman responded that only two vehicles can park in the garage area and the area to the left is not only separate but on a different level than the garage section of the carriage house. Board Member Mark Allen inquired about the nature of the passageway that is shared with the neighbor at 68 Dudley Street. Attorney Youman responded that her parents shared an easement with their neighbor.

Board Member Kathryn Ham inquired about the potential safety issue of backing into the passageway shared by the neighbors. Ms. Curtis responded that the Planning Board felt that the usage of the passageway was so infrequent that it would not constitute a hazard to public safety. Ms. Ham asked about the proposed counterbalancing amenities required under §5.43. Attorney Youman responded that they intended to use the same or similar stone in the new retaining walls as in the existing walls and additional plantings will be provided in front and along the walls as well.

Mr. Mark Allen opined that the proposal seemed reasonable.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant a Special Permit in accordance with Section 5.43, waiver of certain dimensional requirements provided that counterbalancing amenities are provided, and Section 8.02.2, alteration or extension of a pre-existing, non-conforming structure, of the Zoning By-law and makes the following findings pursuant to Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition.

- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

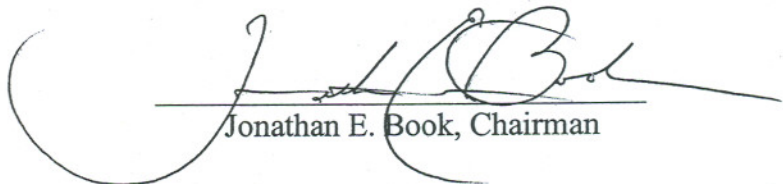
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RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

2009 MAR -5 A 8:00

Unanimous Decision of
The Board of Appeals

Filing Date: March 5, 2009


Jonathan E. Book, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals